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Agency of Administration

SEALED BID
INFORMATION TECHNOLOGY REQUEST FOR PROPOSAL
FOR
Next Generation Licensing Platform

Expected RFP Schedule Summary:

RFP Published	October 5, 2015
Optional Bidders Conference – General RFP Questions (non-requirements related)	October 9, 2015 1:30 p.m. ET
Answers to General Questions Posted	October 13, 2015
RFP Detailed Questions (Requirements related) Due	October 15, 2015 4:30 p.m. ET
Answers to Detailed Questions Posted	October 20, 2015
Proposal Due (see section below for detailed instructions on Proposal Format and submission instructions)	October 30, 2015 4:00 p.m. ET
Finalist Demonstrations	November 16-18, 2015

LOCATION OF BID OPENING: 10 Baldwin Street, Montpelier

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<http://bgs.vermont.gov/purchasing/bids>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK

<http://bgs.vermont.gov/purchasing/bids> **FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.**

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1 Overview and General Information

1.1 Overview

The Office of Purchasing & Contracting on behalf of the Vermont Secretary of State is soliciting competitive sealed, fixed price proposals (Proposals) for its Next Generation Licensing Platform (the Work) from qualified offerors. If a suitable offer is made in response to this Request for Proposal (RFP), the Vermont Secretary of State may enter into a contract (the Contract) to have the selected offer or (the Contractor) perform all or part of the Work. This RFP provides details on what is required to submit a Proposal in response to this RFP, how the Vermont Secretary of State will evaluate the Proposals, and what will be required of the Contractor in performing the Work.

This is a Request for Competitive Sealed Proposals (RFP) to select the vendor who can perform the service described in Attachment F “SoS NGLP RFP – Requirements.docx”.

2 Schedule of Events

The expected timetable, including the Proposal due Date and other important dates, are set forth below. The name of any Vendor submitting a proposal shall be a matter of public record on the Proposal Due Date.

RFP Published	October 5, 2015
Optional Bidders Conference – General RFP Questions (non-requirements related)	October 9, 2015 1:30 p.m. ET
Answers to General Questions Posted	October 13, 2015
RFP Detailed Questions (Requirements related) Due	October 15, 2015 4:30 p.m. ET
Answers to Detailed Questions Posted	October 20, 2015
Proposal Due (see section below for detailed instructions on Proposal Format and submission instructions)	October 30, 2015 4:00 p.m. ET
Finalist Demonstrations	November 16-18, 2015
Recommendation for Award	November 25, 2015
Independent Review Completed Following the selection of a proposal for contract award, the selected proposal will be the subject of an independent review before a contract can be completed.	December 30, 2015
Notification of Award	January 6, 2015
Contract Negotiation	January 7, 2016 – March 1, 2016
Start of Work	March 21, 2016

2.1 Single Point of Contact

All communications concerning this Request for Proposal (RFP) are to be addressed in writing to the attention of:

Stephen Fazekas, Technology Procurement Administrator
State of Vermont
Office of Purchasing & Contracting
10 Baldwin St
Montpelier, VT 05633-7501

Stephen Fazekas, Technology Procurement Administrator is the sole contact for this proposal. Actual contact with any other party or attempts by bidders to contact any other party could result in the rejection of their proposal.

E-mail Address: Stephen.Fazekas@vermont.gov

2.2 Questions and Answers

Any Vendor requiring clarification of any section of this proposal or wishing to comment or take exception to any requirements or other portion of the RFP must submit specific questions in writing no later than Month, Day, YYYY @4:30PM. Questions may be e-mailed to Stephen.Fazekas@vermont.gov. Any objection to the RFP or to any provision of the RFP, that is not raised in writing on or before the last day of the question period is waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site <http://bgs.vermont.gov/purchasing/bids>. Every effort will be made to have these available as soon after the question period ends, contingent on the number and complexity of the questions.

2.3 Demonstration/Bidders Conference:

An in-person or webinar demonstration by the Vendor may be requested and required by the State if it will help the State's evaluation process. The State will factor information presented during demonstrations into the evaluation. Vendors will be responsible for all costs associated with the providing the demonstration.

3 Project Management and Implementation Requirements

A selected vendor shall agree to follow project management methodologies that are consistent with the Project Management Institute's (PMI) Project Management Body of Knowledge (PMBOK) Guide. All staff and subcontractors proposed to be used by a Vendor shall be required to follow a consistent methodology for all Contract activities.

The Contractor will provide a project manager ("PM") and his/her effort will incorporate all the tasks necessary to successfully implement the project. These tasks will include, among others consistent with the PMBOK methodology updating Project Plans, assigning staff, scheduling meetings, reviewing status reports, addressing project issues and change orders, and preparing presentations for State stakeholders. A successful Vendor's Project Manager shall have overall responsibility for the project deliverables, schedule, and successful implementation of the project as planned and all activities of Contractor's resources.

The State's Project Manager shall supervise the Contractor's performance to the extent necessary to ensure that the Contractor meets performance expectations and standards. A selected vendor's Project Manager shall work closely with the State's Project Manager on a day to day basis. A selected vendor's Project Manager shall be on-site in Vermont as the State may require during the entire project based upon an agreed project schedule. A selected vendor's Project Manager shall be required to schedule and facilitate weekly project team status meetings either onsite in Vermont or via teleconference.

A selected vendor's Project Manager shall provide weekly written Status Reports to the State Project Manager. Status Reports shall include, at a minimum: all tasks accomplished, incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the coming two weeks, an updated status of tasks (entered into the Project Plan and attached to the Status Report – e.g., % completed, completed, resources assigned to tasks, etc), and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations, achievements to date, risk management activities, unresolved issues, requirements to resolve unresolved issues, action items, problems, installation and maintenance results, and significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule where applicable. The State PM and the Contractor PM will come to agreement on the exact format of the report document at or before the project kickoff meeting.

The State shall require, at a minimum, the following Project Management Deliverables:

- Contractor PM to work with State project team to finalize a detailed project workplan (in Microsoft Project). The selected vendor shall maintain and update the project plan on a regular basis (at least weekly, if not daily).
- Project kickoff meeting.
- A detailed Project Management Plan (PMP).
- Weekly project status reports as defined above.
- Up-to-date project issues log.
- Up-to-date risk log.
- Weekly project team meetings which shall include meeting agendas and meeting discussion log, action items and update issues and risk logs accordingly.

3.1 Project Scope – Change Management:

The Contractor must directly manage all activities related to Change Management. The Contractor will be required to work with the State Project Manager to establish and execute a change management plan to include all aspects of Change Management. This work will include, but is not limited to, defining and executing activities involved in (1) defining and instilling new values, attitudes, norms, and behaviors within the State of Vermont organization and (2) creating and conducting thorough testing and training tasks to ensure successful implementation and use of the NGLP system.

3.2 Contract/Project Change Orders

Any change to a Contract that alters one or more aspects of the Project scope, schedule, deliverables, or cost, may require a formal Change Request. While such changes may typically incur additional costs and possible delays relative to the project schedule, some changes may result in less cost to the State (i.e.; the State decides it no longer needs a deliverable in whole or part) or less effort on the part of a selected vendor. A change order shall define the effort involved in implementing the change, the total cost or associated savings to the State, of implementing the change, and the effect, if any, of implementing the change on the project schedule.

Change Orders will be developed jointly and every effort will be made to adhere to the approved Project Plan. The Project Manager for the State and the Project Manager for a Contractor will decide whether a formal Change Request is necessary. If a formal Change Request is necessary, the Project Manager for requesting party will prepare a Change Request detailing the impacts on scope, schedule, deliverables, resources, and cost. Once completed, the Change Request will be submitted to the non-requesting party for review. The non- requesting party will make its best efforts to either approve or deny the Change Request in writing within (10) business days. In no event shall any delay in the approval or denial of a Change Request constitute a deemed approval by the State.

All Change Requests that are mutually agreed upon in writing will be considered an amendment to a Contract.

The State will not pay for the effort involved in developing a change order. The Contractor shall bear the cost of estimating the cost or savings, time, and manpower required to implement all change requests forthcoming from the State during the course of the Project. The State and the selected Vendor will work together to outline a change control process which will be used to manage changes to the scope of work being performed.

3.3 Staffing

Each selected Vendor shall obtain approval in advance by the State of all staff proposed for a Project. If any Contractor staff does not perform up to acceptable or satisfactory standards as documented as determined by the State in its sole discretion, a Contractor shall follow State direction to either replace the staff member(s) with State- approved staff or take remedial action to ensure the Contractor is performing at an acceptable standard.

4 Scope of Work – Functional and Technical Requirements

Attachment F “SoS NGLP RFP – Requirements.docx”.

4.1 Intellectual Property/Work Product Ownership

The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under a Contract, including, but not limited to, all data that is generated under a Contract as a result of the use by a Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by a Contractor (“**State Information**”), and all other rights, tangible or intangible (collectively, “**State Intellectual Property**”). A Contractor may not use State Intellectual Property for any purpose

other than as specified in a Contract. Upon expiration or termination of a Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, a Contractor shall be required to immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein. Without any additional cost to the State, a Contractor shall be required to promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product.

“Work Product” shall mean any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with a Contract, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during a Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted a license to any such Contractor Intellectual Property that is incorporated into Work Product.

The Contractor shall not sell or copyright a work product or item produced under a Contract without explicit permission from the State.

If a Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without express written prior authorization by the State.

4.2 Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting information technology projects, which may be created or

changed periodically. It is the responsibility of the Contractor to insure adherence and to remain abreast of new or revised Laws, regulations, policies, standards and guidelines affecting project execution. Agency specific confidentiality and privacy policies, such as Health Insurance Portability and Accountability Act (HIPAA) may apply. These may include, but are not limited to:

- *The State's Information Technology Policies & Procedures at:* <http://dii.vermont.gov/Policy>
- *The State's Record Management Best Practice at:* <https://www.sec.state.vt.us/media/67305/RecordsManagementBestPractice.pdf>
- *The State Information Security Best Practice Guideline at:* https://www.sec.state.vt.us/media/67284/InformationSecurityBestPractice_Eff20090501.pdf
- *The State Digital Imaging Guidelines at:* <https://www.sec.state.vt.us/media/67287/ImagingGuideline2008.pdf>
- *The State File Formats Best Practice at:* https://www.sec.state.vt.us/media/67293/FileFormatsBestPractice_Eff20071201.pdf
- *The State File Formats Guideline at:* <https://www.sec.state.vt.us/media/67290/FileFormatsGuideline2008.pdf>
- *The State Metadata Guideline at:* <https://www.sec.state.vt.us/media/67296/MetadataGuideline2008.pdf>

4.3 Hosted System Requirements

This section is included in the event that the best option is for the system to be hosted at a site other than at the State of Vermont.

- A selected vendor shall be required to agree to terms acceptable to the State regarding the confidentiality and security of State data. These terms may vary depending on the nature of the data to be stored by the Contractor. If applicable, the State may require compliance with State security standards, IRS requirements, HIPAA, HITECH and/or FISMA compliance and/or compliance with State law relating to the privacy of personally identifiable information, specifically Chapter 62 of the Vermont Statutes. Further, a selected vendor hosting a State system may be a "data collector" for purposes of State law and shall be required to (i) comply with certain data breach notification requirements; and (ii) indemnify the State for any third party claims against the State which may occur as a result of any data breach.
- The selected Vendor must agree to host the State's solution within the continental United States of America.
- The State reserves the right to periodically audit the Contractor (or subcontractor) application infrastructure to ensure physical and network infrastructure meets the configuration and security standards and adheres to relevant State policies governing the system.

- The State reserves the right to run non-intrusive network audits (basic port scans, etc.) randomly, without prior notice. More intrusive network and physical audits may be conducted on or off site with 24 hours' notice.
- The Contractor will have a third party perform methodology-based (such as OSSTM) penetration testing quarterly and will report the results of that testing to the State.
- A selected vendor shall agree to cause an SSAE 16 Type II audit certification to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State.
- A selected vendor shall agree to terms acceptable to the State regarding system backup, disaster recovery planning and access to state data.
- A selected vendor shall be required to agree to disclose the hosting provider which shall be acceptable to the State for purposes of the data to be stored and shall not change the hosting provider without the prior written consent of the State.
- A selected vendor shall be required to guarantee the service level terms of any hosting provider.
- A selected vendor shall agree to apply service level credits for the failure to meet service level terms.

5 General Terms and Conditions:

5.1 Invoicing

All invoices shall be rendered by a Contractor on the Contractor's standard billhead and forwarded to the State Project Manager. Details such as name and address will be determined during Contract negotiations. The bidder's proposal must clearly specify the address for submitting payments. All payments are to be based on State of Vermont's acceptance of agreed to, fixed price deliverables or time and materials terms, as the case may be.

5.2 Retainage

The State will hold back 10% of each deliverable payment as retainage. Upon completion of all deliverables to the satisfaction of the State, all retainage withheld will be paid to a Contractor in full, subject to the terms and conditions of the Contract.

5.3 Confidentiality

The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 VSA, Chapter 5, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

5.4 Contract Requirements

The selected Vendor will sign a contract with the State to provide the items named in its response, at pricing agreed by the State. Minimum support levels, and terms and conditions derived from this RFP and the Vendor's response, will be included in the contract as requirements. The contract will be subject to review throughout its term. **VENDORS MAY HAVE STANDARD TERMS AND CONDITIONS WHICH ARE REQUIRED TO BE SUBMITTED WITH A VENDOR'S BID, HOWEVER PLEASE NOTE THAT THE STATE WILL REQUIRE NEGOTIATION OF CONTRACTOR'S TERMS AND CONDITIONS AND WILL NOT ACCEPT THE VENDOR'S STANDARD FORM IN LIEU OF THE STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS.**

5.5 Terms and Conditions

The State will consider cancellation upon discovery that a Vendor is in violation of any portion of its contract with the State, including an inability by the Vendor to provide the products, support, and/or service offered in its response. The State reserves the right to purchase hardware or software recommended in the Vendor's proposal from any source.

Vendors planning to submit a bid are advised of the following:

1. The State expects the Vendor and its legal counsel to carefully review and be prepared to be bound by the ***Standard State Provisions for Contracts and Grants*** outlined in Attachment C.
2. If a Vendor wishes to propose an exception to any Standard State Provisions for Contracts and Grants, it must notify the State in the cover letter to its response to the RFP. Failure to note exceptions will be deemed to be acceptance of the Standard State Provisions for Contracts and Grants as outlined in Attachment C of this RFP. If exceptions are not noted in the RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.
3. The contract is subject to review and approval by the Attorney General, the Department of Information and Innovation and the Secretary of Administration. The terms and conditions of a Vendor's software license, maintenance support agreement and service level agreement, if applicable, will be required for purposes of contract negotiations for this project. Failure to provide the applicable Vendor terms as part of the RFP response may result in rejection of the Vendor's proposal.
4. The State has no legal authority to indemnify a vendor and this condition is not negotiable. Further, all contract terms and conditions, including a Vendor license will be subject to the laws of the State of Vermont and any action or proceeding brought by either the State or a Contractor in connection with a Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Vendors who are not able to enter into a contract under these conditions should not submit a bid.
5. Contractors will be expected to make the following warranties:
 - (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under the Contract and the execution, delivery and performance of the Contract by the Contractor has been duly authorized by the Contractor.
 - (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably

be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under the Contract.

- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under the Contract.
 - (iv) All deliverables will be free from material errors and shall perform in accordance with the specifications therefor.
 - (v) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in the Contract and none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
 - (vi) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor will refund that portion of the fees attributable to each such deficiency.
 - (vii) The Contractor has adequate resources to fulfill its obligations under the Contract.
 - (viii) Virus Protection. Contractor warrants and represents that any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State.
6. Amendments. No changes, modifications, or amendments in the terms and conditions of a contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.
7. Professional Liability insurance. In addition to the insurance required in the Standard State Provisions for Contracts and Grants, Contractor agrees to procure and maintain professional liability insurance for any and all services performed under this Contract, with a minimum coverage of \$2,000,000 per occurrence, with the actual coverage amount to be determined in the State's discretion.

5.6 Non-Disclosure Agreement

The successful bidder will be required to complete a non-disclosure agreement in a form acceptable to the State.

5.7 Performance Measures

In accordance with current State of Vermont policy and procedures, the contract may include Vendor performance measures. The specific performance measures will be determined during the contract negotiation process.

5.8 Acknowledgment of Terms

Vendors shall provide a statement from the Vendor and its legal counsel acknowledging all Standard State Contract Provisions and Purchasing and Contracting Terms and Conditions with any exceptions or additional provisions to be noted in the Vendor's cover letter. (These will be considered when making an award).

5.9 Contract Term

The standard State Contract term will be from the date of execution for a period of up to two (2) years. The State may renew this Contract for an additional two one-year renewals, subject to and contingent upon the discretionary decision of the Vermont Legislature to appropriate funds for this Contract in each new fiscal year. The State may renew all or part of this Contract subject to the satisfactory performance of the Contractor and the needs of State of Vermont.

The vendor should guarantee its rate offerings, over the term of the contract, are comparable to other customers of similar size and requirements. If offerings are rendered to a comparable customer which improve the pricing agreed to in the contract, the vendor agrees to apply those same discounts and offerings to the State of Vermont.

5.10 Location of Work; State Facilities

As a general rule, project work will be done in Montpelier, Vt. The vendor will be required to work on-site in (such site or sites as may be identified by the State) where space will be provided, however travel to other State facilities may be needed and the vendor will be responsible for such travel using its own mode of transportation. Occasional exceptions to this rule may be established by mutual agreement between the vendor and the State Project Manager.

Where applicable, the State will provide desks, telephone, LAN connections, and printers. The State will not provide desktop PCs and/or laptops to vendor for use during the project. To the extent the State space available to a Contractor in any State facility in connection with the performance of the Work, Contractor shall: (i) only use such space solely and exclusively for and in support of the services; (ii) not use State facilities to provide goods or services to or for the benefit of any third party; (iii) comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) not use State facilities for any unlawful purpose; (v) comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of the Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

If specific laptop computers or other mobile peripheral devices are required by vendor Contractor then the Contractor must provide its own compatible equipment and will be given the appropriate support by the State.

Contractors will be provided support by the State in setting up any accounts or connections required (i.e. State email system, network connectivity, network printing etc.). Contractors will

have access to State phones for use in Project related business calls. The State will not pay Contractor's cell phone bills.

5.11 Statement of Rights

The State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal made in response to this RFP. Vendors may be asked to give a verbal presentation of their proposals after submission. Failure of a Vendor to respond to a request for additional information or clarification could result in rejection of that Vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

5.12 Taxes

Most state purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering non taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of the Project.

5.13 Specification Change

Any changes or variations in the specifications set forth in this RFP must be received in writing from the Office of Purchasing & Contracting. Verbal instructions or written instructions from any other source are not to be considered.

5.14 Non Collusion

The State of Vermont is conscious of and concerned about collusion. It should therefore be understood by all that in signing bid and contract documents they agree that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, all bidders should understand that this paragraph might be used as a basis for litigation.

5.15 Business Registration

To be awarded a contract by the State of Vermont a Vendor must be (except an individual doing business in his/her own name) registered with the Vermont Secretary of State's office <http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://www.state.vt.us/tax/businessstarting.shtml>

5.16 Contract Negotiation

Upon completion of the evaluation process, the State may select one or more Vendors with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event the State is successful in negotiating with a Vendor, the State will issue a notice of award. In the event State is not successful in negotiating a contract with a selected Vendor, the State reserves the option of negotiating with another Vendor, or to end the proposal process entirely.

6 Sealed Bid Instructions:

- All bids must be sealed and must be addressed to:

Stephen Fazekas, Technology Procurement Administrator
State of Vermont,
Office of Purchasing & Contracting,
10 Baldwin St.
Montpelier, VT 05633-7501.

- BID ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.
- All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at 10 Baldwin St - Montpelier, VT 05633-7501 by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the vendor, and will not be considered.
- Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: <http://bgs.vermont.gov/purchasing/bids>.
- All bids will be publically opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.

6.1 Delivery Methods:

6.1.1 U.S. MAIL:

- Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.

6.1.2 EXPRESS DELIVERY:

- If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting.

6.1.3 HAND DELIVERY:

- Hand carried bids shall be delivered to a representative of the Division prior to the bid opening.

6.1.4 ELECTRONIC:

- Electronic bids will not be accepted.

6.1.5 FAX BIDS:

- FAXED bids will not be accepted.

7 Vendor Response Content and Format

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, Vendors must follow the format set out in this RFP and provide all information requested.

7.1 Number of Copies:

- Submit an unbound original (clearly marked as such) and one (1) paper copy and one (1) CD-ROM copy.

7.2 The bid should include a **Transmittal Letter and **Technical Response** and a **separate Pricing Response**.**

7.3 Cover Letter

7.3.1 Confidentiality.

As discussed above under Section 5.3, all submittals will be subject to the State's Access to Public Records Law, 1 VSA§ 315 et seq. Subsequent to award of this RFP, all or part of any submittal will be released to any person or firm who requests it. Proposers shall specify in their cover letter if they desire that any portion of their submittal be treated as proprietary and not releasable as public information. **A redacted copy should be included for portions of submittal that are proprietary.**

7.3.2 Exceptions to Terms and Conditions for Technology Contracts.

If the Vendor wishes to propose an exception to any terms and conditions set forth in this RFP, including the Standard State Provisions for Contracts and Grants and Standard State Provisions for Information Technology Contracts, it must notify the State when responding to the RFP. Failure to note exceptions will be deemed to be acceptance of the State terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.

7.4 Functional and Technical Requirements

Indicate the ability of the proposed software application to meet the functional and Technical

Requirements contained in Sections 4.0.

7.5 Professional Services Requirements

Provide a detailed discussion of your firm's approach to the successful implementation of this project. Include thorough discussions of methodologies regarding project management and control, delivery of education and training, cost control, and successful scheduling. This section shall be responsive to Section 3.0, "Project Management and Implementation Requirements". Also include a proposed work schedule to accomplish all of the required tasks within the desired timeline.

7.6 Education and Training

Indicate the level of education and training to be provided to State staff related to the operation of recommended equipment and the proposed solution. This training should be sufficient to allow State to effectively operate the equipment and/or solution, and perform equipment failure diagnostics. Include the following information:

- A discussion of vendor's education and training philosophy.
- A description of the level of education and materials offered, including tables of contents and training materials.
- A description of training that will be provided on-site in Vermont.

7.7 Corporate Background

Provide details of the company, including company size and resources, details of corporate experience relevant to the proposed project, and a list of other current or recent State projects.

If a Vendor intends to use subcontractors, the Vendor must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

7.8 Experience, qualifications and references

Vendors must describe the experience of their firm in completing similar projects. Additionally, Vendors must provide information specific to the personnel assigned to accomplish the work called for in this RFP. Vendors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the title, resume, and description of the type of work the individual will perform about each person listed.

Vendors must provide a minimum of three reference names and phone numbers for similar projects the Vendor's firm has completed. The State reserves the right to contact any references provided by the Vendor. The State invites Vendors to provide letters of reference from previous clients.

7.9 Financial Requirements:

- The Vendor shall provide financial information in such a manner that the State can reasonably formulate a determination about the stability and financial strength of the organization. This must include but not be limited to company size, organization, date of incorporation, ownership, number of employees, revenues for the last fiscal year, and, if available, audited financial statements for the most recent 3 years. A current Dun and Bradstreet Report that includes a financial analysis of the firm would fulfill this requirement. An Vendor can use an Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. The State reserves the right to contact the accounting firm if questions arise. As an alternative, for those Vendors unable to provide audited financial statements or Dun and Bradstreet report, the Vendor shall provide tax returns and financial statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.
- Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the Vendor's organization; or certify that no such condition is known to exist.
- A confidentiality statement may be included if this portion is considered non-public information. The State may request reports on financial stability from independent financial rating services in order to further substantiate stability.

7.10 Quality

If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.

7.11 Worker's Compensation; State Contracts Compliance Requirement

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

7.11.1 Self Reporting: Workers' Compensation; State Contracts Compliance Requirement:

- (a) (1) Bidder is required to self report detailed information including information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable agency.
- The bidder is required to report information on any violations that occurred in the previous 12 months.

- **This form must be completed and submitted as part of the response for the proposal to be considered valid.**

7.11.2 Subcontractor Reporting: Workers' Compensation; State Contracts Compliance Requirement:

- Upon award of contract, **and prior to the commencement of work**, the successful bidder agrees to comply with Subcontractor Reporting requirements in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00 as follows:
- Provide a list of subcontractors to be used on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is included in the bid package.
- Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Workers' Compensation; State Contracts Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

7.12 Certificate of Compliance:

- This form must be completed and submitted as part of the response for the proposal to be considered valid.

7.13 Workers' Compensation; State Contracts Compliance Requirement; Self Reporting:

- This form must be completed and submitted as part of the response for the proposal to be considered valid.

7.14 Workers' Compensation; State Contracts Compliance Requirement; Subcontractor Reporting:

- This form must be completed and submitted upon award of contract, and prior to the commencement of work.

7.15 Offshore Outsourcing Questionnaire:

- This form must be completed and submitted as part of the proposal to be considered valid.

7.16 Econometric Modeling

The Department of Buildings and General Services in accordance with Act 112 of the Acts of 2012, "An act relating to evaluating net costs of government purchasing," requires the Secretary of

Administration and the legislative economist to design and implement a pilot project to help measure the net fiscal impact to the state of certain identified purchases. In order to accomplish this goal, we are seeking data on contracts for goods and services to support the econometric evaluation. Questions have been identified that may assist the state in the data collection process which will ultimately be used for Econometric Modeling.

For bid amounts exceeding \$100,000.00 bidders are required to complete and submit the Econometric Modeling Questionnaire included as part of this RFP (refer to [Attachment E: Econometric Modeling Questionnaire](#), at time of bid.

8 Cost Proposal

The separate Pricing Response must include an original and one (1) paper copies and one (1) CD-ROM copy.

8.1 Costs of Preparation

The Vendor shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made. Remember: the proposal must be fixed cost, inclusive of expenses, for specific deliverables. The State generally doesn't enter into time and material contracts.

8.2 Other Cost Components:

8.2.1 Non-recurring:

- Provide a list of one time charges related to the system/software/hardware or engagement.

8.2.2 Recurring:

- Include annual maintenance costs, licensing fees that are paid on an annual basis, etc.

8.2.3 Price Guarantee:

- Vendor is required to maintain its price for a fixed period of time. If the project contemplates doing additional work with the vendor for additions to the system or addition of new users, state the hourly rates for future work for key types of positions, i.e., Data Base Programmer, Systems Developer, Trainer, etc.

8.2.4 Maintenance Agreement:

- The terms of maintenance and support to be provided following acceptance of the system/software/hardware shall be specified separately and included as a component of the total bid price.

8.2.5 New Releases:

- Vendor is to provide ongoing releases of proprietary software as part of the bid price, or specify what the cost of new releases will be, and also what triggers this requirement and how soon after release you would expect to have your system upgraded.

9 Method of Award

Awards will be made in “the best interest of the State of Vermont.” The State may award one or more contracts and reserves the right to make additional awards to other compliant Vendors at any time during the first year of the contract if such award is deemed to be in the best interest of the State. The State will evaluate responses based upon overall total solution cost, fulfillment of requirements (regardless of type), and overall Vendor track record to deliver and partner. The State will not consider any prompt payment discounts terms proposed by the Vendor in evaluating cost.

9.1.1 Evaluation Criteria

In general, bids are awarded based on “the best interest of the State of Vermont”.

9.1.2 Evaluation Factors

- See Attachment F “SoS NGLP RFP – Requirements.docx”.
- If the RFP required a minimum amount of experience or qualifications, the State will award no points for meeting the minimum. The State will award points for experience and qualifications that exceed the stated minimums.
- The State will not consider any prompt payment discounts terms proposed by the offeror in evaluating cost. The lowest cost proposal will receive the maximum number of points allocated to cost. The State will evaluate the point allocations for cost according to the method set forth in the RFP.

9.1.3 Independent Review:

Per Vermont statute 3 V.S.A. 2222, The Secretary of Administration shall obtain independent expert review of any recommendation for any information technology initiated after July 1, 1996, as information technology activity is defined by subdivision (a)(10), when its total cost is \$1,000,000 or greater or when required by the State Chief Information Officer. Documentation of this independent review shall be included when plans are submitted for review pursuant to subdivisions (a)(9) and (10) of this section. The independent review shall include:

- An acquisition cost assessment
- A technology architecture review
- An implementation plan assessment
- A cost analysis and model for benefit analysis
- A procurement negotiation advisory services contract
- An impact analysis on net operating costs for the agency carrying out the activity

10 Submission Instructions and Checklist:

10.1 Closing Date

The closing date for the receipt of proposals is **October 30, 2015 at 4:00PM**. Bid must be delivered to:

***Vermont Purchasing and Contract Administration Division
Office of Purchasing & Contracting
10 Baldwin St,
Montpelier VT 05633-7501***

prior to **4:00PM**. Proposals or unsolicited amendments submitted after that time will not be accepted and will be returned to the vendor.

The bid opening will be held at Office of Purchasing & Contracting 10 Baldwin St, Montpelier VT05633-7501 and is open to the public.

10.2 Submission Checklist

- 10.2.1** Hard *Copies* (3) – (Reference 7.1)
- 10.2.2** Original Unbound *Master* (1) – (Reference 7.1)
- 10.2.3** Transmittal Letter – (Reference 7.2)
- 10.2.4** CD – (Reference 7.1)
- 10.2.5** References – (Reference 7.8.2)
- 10.2.6** Standard State Provisions for Contracts and Grants (Reference Attachment C)
- 10.2.7** Offshore/outsource form – (Reference Attachment B)
- 10.2.8** Certificate of Compliance – (Reference Attachment A)
- 10.2.9** License & Maintenance Agreements – (Reference 5.20 if applicable)
- 10.2.10** Workers' Compensation; State Contracts Compliance Requirement; Self Reporting
- 10.2.11** Workers' Compensation; State Contracts Compliance Requirement; Subcontractor Reporting
- 10.2.12** Econometric Modeling Questionnaire

10.3 Attachments:

Attachment A: Certificate of Compliance

Attachment B: Offshore Outsourcing Questionnaire

Attachment C: Standard State Provisions for Contracts and Grants (September 1, 2015)

Attachment D: Standard State Provisions for Information Technology Contracts

Attachment E: Econometric Modeling Questionnaire

Attachment F: "SoS NGLP RFP – Requirements.docx".

Workers' Compensation; State Contracts Compliance Requirement; Self Reporting

Workers' Compensation; State Contracts Compliance Requirement; Subcontractor Reporting

REMEMBER!

ALL NOTIFICATIONS, RELEASES AND AMENDMENTS WILL BE POSTED AT:

<http://bgs.vermont.gov/purchasing/bids>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT WILL BE THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK THIS SITE FOR THE LATEST DETAILS.

Attachment A: Certificate of Compliance

DATE:

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

TAXES: Pursuant to 32 V.S.A. § 3113, bidder hereby certifies, under the pains and penalties of perjury, that the company/individual is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont as of the date this statement is made. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes.

INSURANCE: Bidder certifies that the company/individual is in compliance with, or is prepared to comply with, the insurance requirements as detailed in Section 7 of Attachment C: Standard State Contract Provisions. Certificates of insurance must be provided prior to issuance of a contract and/or purchase order. If the certificate(s) of insurance is/are not received by the Office of Purchasing & Contracting within five (5) days of notification of award, the State of Vermont reserves the right to select another vendor. Please reference the RFP and/or RFQ # when submitting the certificate of insurance.

CONTRACT TERMS: The undersigned hereby acknowledges and agrees to Attachment C: Standard State Contract Provisions.

TERMS OF SALE: The undersigned agrees to furnish the products or services listed at the prices quoted. The Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. Percentage discounts may be offered for prompt payments of invoices, however such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

Form of Payment: Would you accept the Visa Purchasing Card as a form of payment? ___ Yes ___ No

Insurance Certificate(s): Attached _____ will provide upon notification of award _____

Delivery Offered: _____ days after notice of award Terms of Sale: _____
(If Discount)

Quotation Valid for: _____ days Date: _____

Name of Company: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ E-mail: _____

By: _____ Name: _____
Signature (Bid Not Valid Unless Signed) (Type or Print)

Worker's Compensation; State Contracts Compliance Requirement

RFP/PROJECT:

DATE:

WORKERS' COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT

Self Reporting

Form 1 of 1

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification for worker's compensation. The state is requiring information on any violations that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

WORKERS' COMPENSATION STATE CONTRACTS COMPLIANCE REQUIREMENT: Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Signature (Bid Not Valid Unless Signed)*

(Type or Print)

*Form must be signed by individual authorized to sign on the bidder's behalf.

Worker's Compensation; State Contracts Compliance Requirement

RFP/PROJECT:

DATE:

WORKERS' COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT

Subcontractor Reporting Form

This form must be completed in its entirety and submitted prior to the commencement of work and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Workers' Compensation; State Contracts Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form To: Office of Purchasing & Contracting
10 Baldwin Street
Montpelier, VT 05633-7501
Attention: Contract Administration

Attachment B: Offshore Outsourcing Questionnaire

Vendors must indicate whether or not any services are or will be outsourced under the terms of any agreement with the State of Vermont. Indicate N/A if not applicable. This is required by the State of Vermont but cannot be used as an evaluation criterion under Federal Law.

Services:

Proposed Service to be Outsourced	Bid Total or Contract Estimate	Represents what % of total Contract Dollars	Outsourced Dollars	Outsourced Work Location (Country)	Subcontractor

If any or all of the services are or will be outsourced offshore, Vendors are required to provide a cost estimate of what the cost would be to provide the same services onshore and/or in Vermont.

Proposed Service to be Outsourced	Bid Total or Contract Estimate if provided Onshore	Bid Total or Contract Estimate if provided in Vermont	Cost Impact	Onshore Work Location	Subcontractor

Name of Bidder:

Signature of Bidder:

Date:

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- 4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party’s operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

10. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the

Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- 20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

ATTACHMENT D - Standard State Provisions for Information Technology Contracts

1. **ORDER OF PRECEDENCE; CONTRACTOR DOCUMENTATION.**

The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document: (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; (f) limit the time within which an action may be brought hereunder; or (g) require the State to maintain the confidentiality of the Contractor without regard to the laws of the State of Vermont.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto, regardless of format, including Contractor's [*insert title of attachment*] attached hereto as Attachment __ and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in an amendment to this Contract.

2. **TERM OF CONTRACTOR'S DOCUMENTS.**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract.

3. **OWNERSHIP AND LICENSE IN DELIVERABLES**

3.1 Contractor Intellectual Property.

Contractor shall retain all right, title and interest in and to all Contractor Intellectual Property that Contractor delivers to the State in accordance with Attachment A of this Contract. "Contractor Intellectual Property" means any intellectual property, tangible or intangible, that is owned by Contractor and contained in or necessary for the use of the items that Contractor is required to deliver to the State under this Contract, including Work Product ("Deliverables"). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the Deliverables, the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual

Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to any such Contractor Intellectual Property that is incorporated into Work Product.

3.2 State Intellectual Property; State Intellectual Property; User Name

The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

3.3 Work Product

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship,

specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

4. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

4.1 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not

patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

4.2 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of

such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract (“State Data”). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor’s possession to only those employees on its staff who must have the information on a “need to know” basis. The Contractor shall use State Data only for the purposes of and in accordance with this Contract. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

4.3 Security of State Information. The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 3 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor

systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

4.4 Back-Up Policies: The Contractor's back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

4.5 Security Breach Reporting. The Contractor acknowledges that in the performance of its obligations under this Contract, it will be a "data collector" pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (including PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device; loss or theft of printed materials; or failure of security policies) (collectively, a "Security Breach"), and in accordance with 9 V.S.A. § 2435(b)(2), the Contractor shall immediately notify appropriate State personnel of such Security Breach.

The Contractor's report shall identify: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach and Notification Event, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

5 SUBCONTRACTORS

Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under an agreement with Contractor. Contractor shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing any of the Work under an agreement with Contractor or any subcontractor.

6 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

6.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (ix) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (x) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (xi) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (xii) The Contractor owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Contract and none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (xiii) The Contractor has adequate resources to fulfill its obligations under this Contract.

6.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All deliverables will be free from material errors and shall perform in accordance with the specifications therefor.

- (ii) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor shall refund that portion of the fees attributable to each such deficiency.
- (iii) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all lines, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (iv) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

6.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

6.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

7 INDEMNIFICATION.

The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent a Contractor Document expressly provides for or implies indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

Notwithstanding anything to the contrary set forth in Attachment C of this Contract, the Contractor shall have no obligation to indemnify the state, its officers or

employees from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of the State, its officers, employees or agents.

8 PROFESSIONAL LIABILITY INSURANCE COVERAGE.

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$XXXXXXX per claim, \$XXXXXXX aggregate, and first party Breach Notification Coverage of not less than \$XXXXXXX.

- 9 SOVEREIGN IMMUNITY.** The Contractor acknowledges that the State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Contract.

10 DISPUTE RESOLUTION

10.1 Governing Law; Jurisdiction. The Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

10.2 Contractor Default. The Contractor shall be in default under this Contract if Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided in this Contract, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) days after delivery of the State's notice period, or such longer period as the State may specify in such notice.

10.3 State Default. State shall be in default under this Contract if State commits any material breach or default of any covenant, warranty, or obligation under this Contract and State fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

10.4 Trial by Jury. The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

10.5 Trade Secret, Patent, and Copyright Infringement. The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

10.6 Limits on Actions Prohibited. The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders null and void any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations.

10.7 Continuity of Performance. In the event of a dispute between the Contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.

11 REMEDIES FOR DEFAULT;

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

12 TERMINATION.

12.1 Termination Assistance.

Upon nearing the end of the final term of this Contract, and without respect to either the cause or time of such termination, the Contractor shall take all reasonable and prudent measures to facilitate the transition to a successor provider, to the extent required by the State. The Contractor shall, at any time during the six (6) months preceding termination, provide such information about the System as will be reasonably required by the State and/or the successor for purposes of planning the transition. The Contractor shall immediately provide historical records to the State in a form acceptable to the State for the preceding seven years.

The Contractor agrees, after receipt of a notice of termination, and except as otherwise directed by the State, the Contractor shall:

1. Stop work under the Contract on the date, and to the extent, specified in the notice;

2. Immediately deliver copies of all subcontracts and all third party contracts executed in connection with the performance of the Services;
3. Place no further orders or subcontracts for Services, except as may be necessary for completion of such portion of the work under the Contract that is not terminated as specified in writing by the State;
4. Assign, to the extent applicable or as the State may require, all subcontracts and all third party contracts executed in connection with the performance of the Services to the State or a successor provider, as the State may require;
5. Perform, as the State may require, such knowledge transfer and other services as are required to allow the Services to continue without interruption or adverse effect and to facilitate orderly migration and transfer of the services to the successor provider;
6. Complete performance of such part of the work as shall not have been terminated; and
7. Take such action as may be necessary, or as the State may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest and to transfer that property to the State or a successor provider.

Contractor acknowledges that, if it were to breach, or threaten to breach, its obligation to provide the State with the foregoing assistance, the State would be immediately and irreparably harmed and monetary compensation would not be measurable or adequate. In such circumstances, the State shall be entitled to obtain such injunctive, declaratory or other equitable relief as the State deems necessary to prevent such breach or threatened breach, without the requirement of posting any bond and Contractor waives any right it may have to allege or plead or prove that the State is not entitled to injunctive, declaratory or other equitable relief. If the court should find that Contractor has breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive or any equitable relief, Contractor will not oppose the entry of an order compelling its performance and restraining Contractor from any further breaches (or attempted or threatened breaches).

12.2 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time, and, if specifically directed by the State, Contractor shall destroy all State Data in its possession, power or control in a manner that assures the State that the information is rendered unrecoverable.

12.3 No Waiver of Remedies. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

12.4 Contractor Bankruptcy. Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

13 ACCESS TO STATE DATA:

Within ten (10) business days of a request by State, the Contractor will make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Intellectual Property and State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Intellectual Property and State Data to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

14 STATE FACILITIES.

14.1 During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the Services, subject to the conditions that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply

with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

14.2 Contractor Facilities. Contractor will be responsible for procuring, managing, maintaining and otherwise making available all Contractor Resources necessary to provide the Services in accordance with the Requirements hereunder. Contractor will seek and obtain the State’s prior written approval for any relocation of any Contractor Facilities at, from or through which the Services are provided and shall mitigate any impact to the State. Any such relocation shall be without additional cost to the State. No Contractor Facility providing Services pursuant to this Contract shall be located outside the United States.

15 AUDIT

15.1 Audit Rights. Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor’s and/or its permitted contractors’ operations and security procedures and controls; (iv) examine and verify Contractor’s and/or its permitted contractors’ disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor’s and/or its permitted

contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

15.2 Operations Security. The Contractor shall cause an SSAE 16 SOC 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

16 CONFLICTS OF INTEREST

Contractor agrees that during the term of this Contract, its performance shall be solely in the best interest of the State. Contractor will not perform services for any person or entity which has also contracted with the State of Vermont in connection with the same project, without express written consent of the State. Contractor shall fully disclose, in writing, any such conflicts of interest, including the nature and extent of the work to be performed for any other person or entity so that the State may be fully informed prior to giving any consent. Contractor agrees that the failure to disclose any such conflicts shall be deemed an event of default under this Contract, and this Contract shall be terminable immediately.

17 MISCELLANEOUS

17.1 Taxes. Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.

17.2 Force Majeure. Neither party shall be liable to the other for the failure or delay of performance of any obligation hereunder if such failure or delay is wholly or principally caused by acts or events beyond the nonperforming party's reasonable control making it illegal or impossible to perform their obligations under this Contract. The following events shall constitute Force Majeure for purposes of this Contract: acts of civil or military authority; fires,

floods, earthquakes or other natural disasters; war or riots; or government embargoes. The nonperforming party asserting Force Majeure must promptly notify the other party of the event giving rise to the Force Majeure.

Performance shall only be excused hereunder if the nonperforming party can prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Contract, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

17.3 Marketing. Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties.